

NOTICE TO ALL MEMBERS

Dear Palm Canyon Villas Homeowners:

Your Board of Directors has the responsibility to operate and maintain the complex in a first class condition. Over the past 18 months, there have been extensive efforts spent on repair and maintenance on a number of items including roofing, plumbing and electrical, pools and spas. We keep you informed through monthly board meetings and minutes, memos and our Internet web site. When questions arise, we refer to the CC&R's, Rules and Regulations, and continually recommend individual owners maintain homeowner insurance on their units.

The purpose of this letter is to bring to your immediate attention a problem which, although easily and inexpensively remedied by homeowners, is becoming something of an epidemic in the Palm Canyon Villas Homeowners Association ("Association"). Your board wishes to prevent any potential costly, inconvenient and preventable situations whenever possible. Please understand this is a brief explanation of the CC&Rs and that nothing has changed since they were updated and approved in 1995.

Specifically, this letter is referring to several water intrusion issues Association members have recently experienced as the result of the failure of water supply lines and other such plumbing components within their Units. As the complex ages, we need to remind everyone that Owners are obligated to maintain these areas but some have failed to do so. The Association recommends in the strongest terms possible that you take action to inspect, and if necessary, repair or replace the plumbing system components within your Unit. This may prevent the potentially devastating financial consequences of a water leak resulting in damage to not only your Unit, but also to your neighbors' Units, and to the Association Common Area.

Examples of the plumbing components Owners should be routinely inspecting, and if necessary, repairing or replacing include any and all lines supplying water to any appliances, such as refrigerators (ice maker water supply lines), dishwashers and washing machines. Water supply lines servicing fixtures such as toilets, baths, showers and sinks, including faucets and angle stops should also be inspected. There have also been issues with toilet component parts failing. Again, these are only examples and Owners should generally inspect any source of water entering or exiting (drains; sewer lines; waste disposal units) their Unit.

YOUR \$FINANCIALS "BOTTOM LINE"

An ounce of prevention is worth a pound of cure. A decision not to complete a proactive

inspection, repair or replacement regimen now and on a continual basis could cause you the risk of suffering a potentially devastating financial loss in the future.

The following is a general analysis of a water intrusion claim which delineates how you can and will be held responsible for water damage, wherever it occurs, resulting from your failure to perform maintenance to your property and its components.

THE ASSOCIATION IS RESPONSIBLE FOR MAINTAINING THE COMMON AREA

California *Civil Code* §1364(a) provides, in pertinent part:

Unless otherwise provided in the declaration of the common interest development, the association is responsible for repairing, replacing or maintaining the common areas, other than exclusive use common areas, and the owner of each separate interest is responsible for maintaining that separate interest and any exclusive use common area appurtenant to the separate interest. [Emphasis added]

Article X, Section 1. of the Association's Restated Declaration of Covenants, Conditions and Restrictions (CC&Rs"), entitled "*Maintenance Responsibilities- Common Area and Recreational Area*" provides, in pertinent part:

*The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of facilities **within the Common Area** ...including but not limited to the following: roofs, gutters, downspouts, and the exterior building surfaces (but not glass surfaces and screens) and those improvements designated as Exclusive Use Common Area, [Emphasis added]*

Section 2 of the foregoing Article of the Association's CC&Rs, entitled "*Association Maintenance Responsibility With Respect to Unit Improvements*" provides, in pertinent part:

*The Association maintenance shall not include: Glass surfaces, screens, landscaping within the private balcony, deck, patio or any alteration or addition to the Common Area made by the Owner of the Unit, nor repairs or replacements arising out of, or caused by the willful or negligent act of the Owner... The Association shall be responsible to maintain, repair and replace all utilities, sewer water and gas lines within the Common Area as well as any such services **used by more than one Unit**, [Emphasis added]*

Item 2 of the Association's Condominium Plan, defines the Association "Common Area", in pertinent part:

*The “common area” is all of the land and real property included within the boundary lines of this project, **except those portions shown and defined herein as Units** ... [Emphasis added]*

OWNERS ARE RESPONSIBLE FOR REPAIRING THEIR “UNIT” AND MAINTAINING THE PLUMBING SYSTEMS EXCLUSIVELY SERVICING THE SAME

In contrast to the Association’s maintenance obligations, Article x, Section 3. of the Association’s CC&Rs, entitled “Owner Maintenance Responsibilities” provides, in pertinent part:

*Except as specifically provided in Section 1, above, **each Owner shall be responsible for the maintenance and repair of his or her Unit, including without limitation, the equipment and fixtures in the Unit, ceilings, windows, doors, showers, baths, tiling, plumbing within the Unit, sinks, toilets, electrical sockets, switches, wiring, air conditioners, heating units, outlets, fans, windows and sliding glass doors (exterior and interior) deck coverings, carpeting, interior floor surfaces, lighting installations, electrical appliances and telephone equipment of the owned Unit....***

The Owner shall be liable for interior damage to his or her personal property in the Project resulting from water which may leak or flow from outside any Unit or from any part of the building, or from any pipes, drains, conduits, appliances or equipment of from any other place of cause, unless caused by the gross negligence of the Association, its Board, officers, the manager or his or her staff.
[Emphasis added]

Items 3 through 8 of the Association’s Condominium Plan define a “Unit” in pertinent part, as :

... The boundaries of each ... apartment are the interior finished surfaces of the perimeter walls, floors, ceilings, windows and doors thereof and each apartment includes those surfaces so described, the portions of the buildings and improvements lying within said boundaries except [bearing walls, columns, vertical supports, floors, roofs, foundations, beams, patio walls and fences, central services, pipes, ducts flues, chimneys, wires, and other utility installations, wherever located, except the outlets thereof when located within a unit] and the Air Space so encompassed. ...

Pursuant to the foregoing provisions and definitions of the Association’s CC&Rs and its Condominium Plan, the Association is responsible for the cost to repair any damage to the “Common Area” components of the project, if any, which have sustained damage as the result of water intrusion. **In contrast**, the Owner of a Unit damaged by water intrusion is responsible for the cost to repair damage to their “Unit,” as that term is defined above. In other words, the

Owner of a Unit damaged by water intrusion is responsible for the cost to repair any damage to, or encompassed within, the “interior finished surfaces of the perimeter walls, floors, ceilings, windows and doors” of the Unit. The Owner of the Unit is also responsible for the cost to repair or replace any damaged “personal property.”

ABSENT A SHOWING OF NEGLIGENCE, THE ASSOCIATION IS NOT LIABLE FOR DAMAGES TO THE INTERIOR OF THE “LIVING UNIT”

Shared maintenance responsibilities and distribution of the risk of loss amongst an association and its members are part of the fundamental concept of a condominium development. **Absent Negligence**, the *general* rule and analysis in a water intrusion situation is that the Association is **not** responsible for damage to a Unit and/or the personal property of an owner **even if** that damage is caused by water intrusion from a source outside the Unit, and even if the cause of the water intrusion is the failure of a component which the Association is responsible for maintaining. Components of the complex are aging and inevitably will fail. Nothing lasts forever.

The most common example is a situation in which a roof leaks and causes damage to the interior of a unit. In such a case, the Association would be responsible to repair the roof and any damage to the Association Common Areas. **In contrast**, the Owner of the damaged Unit would be responsible for the repairs to the Unit’s interior as noted above, to include but not be limited to carpet, cabinets, furnishings, etc.

The major *exception* to this general rule and analysis is where a party suffering damages can establish that the party responsible for maintaining the component which failed, causing the water damage, was Negligent with respect to their maintenance obligation. However, **the mere fact that a component fails and damage occurs does not constitute Negligence**. Rather, Negligence is established by showing that the party responsible for the maintenance knew, or should have known, that the component which failed was in need of the same, such that it was foreseeable the component would fail causing the damage which occurred, but nonetheless failed to perform that maintenance.

In the roof example above, Negligence could be established by showing the Association deferred replacement of the roof in favor of a minimal maintenance program. Courts often determine that the decision to defer or not to perform such maintenance constitutes Negligence or an assumption of the risk of bearing the cost to repair damage which results from the same.

The same argument is true in the case of the failure of component an Owner is responsible for maintaining such as a faucet which leaks. Absent a showing of Negligence, the Owner would only be responsible for repairing the faucet and any damage to their Living Unit. If there was also damage to the Common Area and/or to a neighboring Unit, then, absent Negligence, the entity charged with maintaining those areas bears the cost of repairing the same. Negligence in this example would be established by showing that a reasonably prudent, similarly situated

person would have repaired the faucet before it failed but did not do so. If such Negligence can be established, the Owner would be responsible for the cost to repair not just the faucet and their Unit, but also the Common Area and their neighbor's Unit.

By copy of this letter, you have been reminded of your responsibilities with respect to maintenance of the plumbing components and systems servicing your Unit, and have been advised of the potential consequences of not completing preventative maintenance. Our legal counsel has suggested the Association should consider your failure to act on the recommendations set forth above to be a failure to act as a reasonably prudent person in receipt of such recommendations would act.

INDIVIDUAL OWNERS ARE ENTITLED TO MAKE A CLAIM AGAINST THE ASSOCIATION'S INSURANCE POLICY FOR WHATEVER INSURANCE IS AVAILABLE

Notwithstanding the foregoing, the Owner of a Unit damaged by water intrusion is entitled to submit a claim against the Association's Master Insurance policy for their losses, **to the extent there is such coverage and subject to that policies deductible**. California case law has concluded that because the individual owners pay for association insurance through their assessments, they are entitled to whatever insurance coverage is *actually* provided by the Association's Master policy, regardless of the insurance coverage the Association is *obligated* to obtain and maintain pursuant to the CC&Rs.

To the extent the coverage *actually* provided by the Association's Master policy extends the coverage it is obligated to carry, Owners are entitled to that extended coverage. In other words, Owners may make a claim against the Master policy for damage to floor and wall coverings or improvements and fixture if that coverage is available under the Master policy, regardless of the fact the Association is not obligated to provide such coverage. Where there is coverage under the Master policy, that coverage is generally considered to be primary as compared to the Owner's individual policy which is secondary, and only takes effect when the primary coverage has been exhausted.

Article XV, Section 1A. of the Association's CC&Rs entitled "Insurance-Types of Insurance Coverage" provides, in pertinent part:

(A) Property Damage Insurance - The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, for the full insurable value of all the buildings containing Units within the properties and on any common facilities.

Section 2 of the foregoing Article, entitled "Owner's Insurance" provides, in pertinent part:

Each Owner may maintain whatever personal liability and property damages liability insurance that he or she desires with respect to the contents of his or her Unit and any other items that the Association is not obligated to maintain and repair.

Pursuant to the foregoing provision of the Association's CC&Rs, it is required to carry a Master Policy of casualty insurance for the "full insurable value of all the buildings **containing Units** within the properties and on any common facilities." The Association is not *obligated* to insure the "Units" themselves as that term is defined above, nor does the Association *actually* carry such coverage. Furthermore, to the extent there may be coverage for a component on your Unit under the Master policy, any claim against the same is subject to the deductible amount, which is currently \$5,000.00. It is therefore imperative that you obtain and maintain individual insurance (an HO6 policy) for your "unit" and personal property.

CONCLUSION

1. It is the owner's responsibility for inspecting, maintaining and replacing the plumbing components and systems servicing your Unit, wherever those systems are located.
2. The Association is not responsible for the cost to repair damage to your Unit, or to repair or replace your personal property located therein.
3. The Association is not obligated to, and does not carry insurance for your Unit, or for the personal property located therein. You are solely responsible for obtaining and maintaining insurance coverage for the same.
4. Your failure to perform your maintenance obligations despite your knowledge of the same may be considered a failure to act as a reasonably prudent person would act under similar circumstances which may be held by a Court to be Negligence. In that event, you will be personally responsible for the cost to repair any damage resulting from your negligence, regardless of where that damage occurs.

Should you have a situation arise please advise management. It is important to stop the source of water intrusion as quickly as possible. The Association will then investigate the cause and responsibility to correct it as each situation is unique. Your management staff are the On-Site Manager, (760) 324-4835 and Personalized Property Management, (760) 325-9500.

Board of Directors

Palm Canyon Villas Homeowner Association
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